S.B.Civil Misc.Appeal No.54/1993
Satyanarain vs. Mahendra Singh

Date of Order: 20.7.2006.

HON'BLE MR. PRAKASH TATIA, J.

Mr. Siddharth Joshi, for the appellant.
No body appears on behalf of the respondent.

Heard learned counsel for the appellant.

This appeal is against the order of the trial court dated 11.2.1993 passed in Civil Misc. Case No.40/90, whereby the court below held the appellant guilty for disobedience of the court's order dated 24.5.1984 and passed the order of sentence of seven days civil imprisonment.

Brief facts of the case are that the plaintiff-respondent filed one suit for declaration and injunction against the Rajasthan State Electricity Board (for short “the RSEB”) and impleaded the Executive Engineer and one Anupam Saxena, the then T.A. and Assistant Engineer of the RSEB and one Allaudeen. The trial court by its order dated 26.3.1984 dismissed the injunction application filed by the plaintiff. The plaintiff preferred appeal against the injunction order before the District Judge, Udaipur, which was ultimately transferred to the court of Addl. Civil Judge No.2, Udaipur. In said appeal, interim order was passed on 14.5.1984 restraining the RSEB and respondent no.3-Anupam Saxena in the appeal before the first appellate court, from recovering any amount from the plaintiff and to maintain the status quo. It may be

relevant to mention here that notice sent for respondent no.2 Executive Engineer for the date 14.5.1984 returned unserved and, therefore, interim order was passed against the other respondents except the appellant. On 30.5.1984 the learned Advocate appeared on behalf of the respondents including the present appellant and the court ordered to maintain the status quo about the recovery proceedings. It is alleged that despite the injunction order dated 14.5.1984 and extended thereafter, the appellant being Executive Engineer of the RSEB passed the order on 10.8.1984 and directed the Accounts Officers to recover the amount from the plaintiff and thereafter some amount was deducted from the already deposited amount of the plaintiff on 24.3.1985, therefore, the contempt petition under Order 39 Rule 2A, C.P.C. was filed by the plaintiff and it was contested by the appellant contemnor by filing reply.

The contention of the appellant in the reply was that the amount which was deducted was of a different contract and there was no restrained order for deduction of any amount of different contract. Be it as it may be, it is submitted by the learned counsel for the appellant that subsequently, the amount which was in fact of one contract was kept in different account because of the reason of pendency of the litigation and that cannot amount to recovery of any amount from the plaintiff. It is submitted that the contemnor himself gave his statement

on oath before the court below stating so. It is submitted that the court below has not considered the entire facts of the case and straight way passed the order holding the appellant guilty. It is submitted that the appellant himself was not party in the suit nor it has been pleaded by the plaintiff in the contempt petition that he was the person in-charge or was officer in-charge of the suit. It is submitted that there was no motive to disobey the court's order. It is also submitted that there was no order of the court to make payment to the plaintiff and mere change in the account is not the disobedience of court's order. It is also submitted that ultimately, the main appeal against the injunction order was dismissed by the appellate court by order dated 10.2.1993. Therefore, in totality of the facts and circumstances of the case, this is a fit case where the appellant may be exonerated from the punishment.

No body appeared on behalf of the respondent.

I considered the submissions of the learned counsel for the appellant and perused the record also.

It is clear from the facts mentioned above that this matter was of the year 1984 and more than 20 years have already passed. The appellant contemnor lived with sword of punishment over him for the last more than 20 years, in a case where injunction application was dismissed, not only by the trial court but by the appellate court. It appears from the facts that the complete facts were not in knowledge

of the appellant-respondent and he, in the interest of the department, might have passed the order to keep the money in different account. It appears from the allegation of the plaintiff that he under impression that because of the order passed by the appellate court, which was interim in nature, he could have got the payment but in fact the plaintiff ignored the fact that in any case, he could not have got the amount involved in the suit for which he filed the injunction application because the appellate court passed the order to maintain the status quo also in addition to restrain the respondent from recovering the amount, therefore, the plaintiff has not been deprived from any benefit of payment, because there was no order to make payment to the plaintiff.

In view of the reasons mentioned above, the appeal deserves to be allowed and hence allowed and the order passed by the court below dated 11.2.1993 is set aside. The contempt petition filed by the plaintiff under Order 39 Rule 2A is dismissed.

(**PRAKASH TATIA),J.**

mlt.